



The following constitutes the order of the court.
Signed October 3, 2014


William J. Lafferty, III
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

BERKELEY DELAWARE COURT, LLC,
Debtor.

No. 11-07128
Chapter 11

FIRST CITIZENS BANK & TRUST
COMPANY, as assignee of
Christopher R. Barclay,
Chapter 7 Trustee of Berkeley
Delaware Court, LLC,
Plaintiff,

Adv. Pro. No. 13-04219

v.

EMIL SHOKOHI,
Defendant.

1080 DELAWARE LLC,
Plaintiff-In-Intervention

MEMORANDUM REGARDING FORM OF ORDER

A hearing was held in the above-captioned adversary
proceeding on April 21, 2014. The court determined that the

1 leasing of the rental property to the Defendant violated
2 section 549 of the United States Bankruptcy Code, and entered a
3 *Memorandum Finding Lease Voidable* which determined that relief
4 under section 549 rendered the subject transaction voidable but
5 not void.

6 The Plaintiff-in-Intervention submitted a proposed order
7 granting summary judgment to the court on October 1, 2014. A
8 copy of the proposed order was served on Defendant, and a
9 response was filed. The Defendant believes the following
10 language should be included in the order: "The Court has not
11 ruled on any state law issues, including issues of waiver and
12 estoppel, and whether any party has ratified the lease by its
13 statements or conduct." For the reasons discussed below, the
14 court believes this language is overbroad and should not be
15 included in the order.

16 In determining that section 549 applied to the transfer,
17 the court necessarily considered and rejected arguments made by
18 the Defendant that the transfer should not be avoided for
19 reasons based on waiver, estoppel, and ratification of the
20 lease. In the Defendant's *Memorandum of Points and Authorities*
21 *in Opposition to 1080 Delaware's Motion for Summary Judgment*
22 the Defendant argued that there were triable issues of fact
23 because Plaintiff-in-Intervention adopted and ratified the
24

1 Defendant's lease. The court considered the Defendant's
2 Opposition prior to the April 21 hearing. At the conclusion of
3 the hearing, the court granted Plaintiff-in-Intervention's
4 motion for summary judgment and necessarily rejected this
5 argument. The court affirmatively found the transfer voidable
6 under section 549(a). Consequently, the Defendant cannot raise
7 issues of waiver or estoppel if inconsistent with the court's
8 determination that the lease is voidable. The language the
9 Defendant requests be included in the order is overbroad.
10

11 Defendant also requests the following language be removed
12 from the proposed order: [the Lease] "is of no further effect
13 as of the entry of this Order." This language is consistent
14 with the court's ruling at the conclusion of the April 21
15 hearing and the *Memorandum Finding Lease Voidable*. This
16 language shall remain in the proposed order.
17

18 Having so determined, the court made no other findings or
19 determinations with respect to issues involving waiver,
20 estoppel, or ratification beyond the applicability of section
21 549 to the initial lease transaction. The court will enter a
22 copy of the proposed order submitted by the Plaintiff-in-
23 Intervention.
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26 ***END OF MEMORANDUM***
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